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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 KDH CONSULTING GROUP LLC,

4 Plaintiff,

5 v.

20 CV 3274 (VM)

6 ITERATIVE CAPITAL MANAGEMENT
7 L.P., et al,

8 Defendants.

REMOTE TELECONFERENCE

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9 New York, N.Y.

10 May 5, 2020

4:02 p.m.

11 Before:

12 HON. VICTOR MARRERO,

13 District Judge

14 APPEARANCES

15 DILENDORF KHURDAYAN
Attorneys for Plaintiff

16 BY: RIKA KHURDAYAN

17 BARNES & THORNBURG
Attorneys for Defendants

18 BY: LAWRENCE GERSCHWER
19 ROBERT J. BOLLER
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(Remote teleconference)

THE COURT: Good afternoon. This is Judge Victor Marrero. I thank you all for joining us in this conference by this means.

Would the participants identify themselves for the record. We have a court reporter who is taking the transcript of this conference. Who's on for plaintiffs?

MS. KHURDAYAN: Good afternoon, your Honor.

This is Rika Khurdayan of Dilendorf Khurdayan, counsel for plaintiff.

THE COURT: Thank you.

Defendants?

MR. BOLLER: Good afternoon, your Honor.

This is Robert Boller from Barnes & Thornburg, counsel for defendants. One of my partners, Lawrence Gerschwer, is on the phone as well.

MR. GERSCHWER: Good afternoon, your Honor.

THE COURT: Good afternoon.

Is the court reporter on?

THE COURT REPORTER: Yes, Judge. It's Martha Martin.

Good afternoon.

THE COURT: All right. Thank you.

So, again, let me express my appreciation for your participation by this means. This conference is evidence that, despite the difficulties that we're all facing with the health

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1 emergency that is all around us, the justice system continues
2 and the courts dispense justice. And we thank all of the
3 people who are -- who enable us to continue to provide judicial
4 assistance services, despite the great number of challenges and
5 difficulties that are involved.

6 This proceeding is scheduled in the matter of *KDH*
7 *Consulting Group LLC v. Iterative Capital Management*. It's
8 docket number 20 CV 3274.

9 The Court received filing of a complaint and has
10 reviewed that document, along with its memorandum of law and
11 the declaration that was filed with exhibits. I've also read
12 the response submitted by the defendants in a letter dated May
13 1, and further response from the plaintiffs dated May 4th. I
14 read the order to show cause that was considered by Chief Judge
15 McMahon sitting in Part 1, and the preliminary injunction that
16 she issued.

17 The Court has reviewed the letters submitted by
18 defendants of May 1. And the letter, in effect, is, in my
19 view, a motion to dissolve the preliminary injunctive relief
20 and TRO granted by Judge McMahon. This motion could be and
21 would be properly made under Rule 65(b)(4). And on that basis,
22 the Court will invite the parties to address the motion,
23 setting forth your arguments as to why the injunction and TRO
24 that the plaintiff requests should or should not be granted,
25 and the legal basis for your arguments.

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1 If we proceed this way, this proceeding could be
2 considered, in effect, a substitute for the hearing that was
3 scheduled by Judge McMahon to be held on May 11th, with the
4 documents that you have already submitted and the legal
5 arguments that -- and any evidence you may want to put on the
6 record at this proceeding. It's conceivable that we may
7 need -- we may not need the May 11th hearing, and the Court
8 could rule on the basis of the document and the record that
9 exists as of now, supplemented by your arguments.

10 So let me ask whatever party may have any preliminary
11 thoughts on that way to proceed.

12 MR. BOLLER: Your Honor, this is --

13 MS. KHURDAYAN: Your Honor --

14 MR. BOLLER: Your Honor, this is Robert Boller,
15 counsel to the defendants here.

16 We are the ones who made the motion -- submitted the
17 letter and made the motion last week. I think we are
18 tentatively okay proceeding that way. I would point out that
19 the letter that we submitted last week was -- while we're proud
20 of it, it was incomplete in the sense that it did not purport
21 to or attempt to raise all of the issues that we believe exist
22 with respect to likelihood of success on the merits here. I
23 think that we -- you know, we flagged very serious
24 jurisdictional questions for the Court. I think that we
25 flagged issues around notice and the balancing of the harms,

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1 particularly given the amount of time that lapsed between when
2 this was announced and when plaintiff came to court.

3 But I would note that our -- for example, our letter
4 did not attach any documents. We didn't point to any new
5 evidence. And so while we think -- we think that these claims
6 and this issue can be resolved just based on the documents that
7 the plaintiffs have submitted. If the Court is not convinced
8 of that, we would ask for the opportunity to fully brief the
9 issue of whether the TRO should remain in place, and to provide
10 the Court with documents.

11 As I said, we haven't provided any, but there are some
12 relevant communications that we would bring to the Court's
13 attention; we just felt that our letter was not the appropriate
14 procedural device to do so. But I'm happy to proceed in that
15 way, with that caveat.

16 THE COURT: Understood.

17 Let me acknowledge that I have reviewed other issues
18 beyond the question of the granting of a TRO and the
19 preliminary injunction by Judge McMahon. There are issues that
20 have been raised concerning venue. There's dispute as to
21 whether or not the plaintiffs waited until the last moment to
22 file this suit, without giving the defendants an opportunity to
23 respond, and the plaintiffs obtaining *ex parte* relief, I
24 recognize that all of those are legitimate issues.

25 However, overarching those issues is the sessional

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1 question as to whether or not the plaintiff has made a case
2 under Rule 65 for injunctive relief on the three or so prongs
3 of that test, which is whether or not the plaintiff has shown
4 irreparable harm, the likelihood of success on the merits,
5 and/or whether the merits determinations here would be whether
6 the balance of equities favor either the plaintiff or the
7 defendants.

8 I think that those questions could be addressed as a
9 sessional matter on the basis of what you have already
10 submitted. I don't believe that I would need much further
11 documentation beyond what you already put in the record. But
12 if you persuade me otherwise, we can leave open the question as
13 to what additional documentation may be necessary.

14 Plaintiff?

15 MS. KHURDAYAN: Your Honor, this is --

16 THE COURT: Plaintiff, you have the floor.

17 MS. KHURDAYAN: Thank you, your Honor.

18 Your Honor, we would like to direct your Honor's
19 attention to the fact that this mostly addressed in our
20 response letter, the issue of setting aside the existing TRO,
21 which we think is impermissible and does not set aside in any
22 case the requirement for Rule 60. And we have not addressed
23 the merits of our motion for preliminary injunction, just
24 because we thought it was outside of the scope of defendants'
25 request via letter motion.

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1 THE COURT: All right. Again, coming back, I don't
2 see the vehicle that is appropriate here to be Rule 60. I am
3 invoking as the appropriate rule 65(b)(4), which addresses
4 precisely what is happening here. And defendant is essentially
5 asking for the Court to dissolve the preliminary injunction
6 that was granted *ex parte* to the plaintiff by Judge McMahon in
7 Part 1, sitting in Part 1, on the basis of the submission made
8 by the plaintiff then, including a memorandum of law, a
9 declaration.

10 The plaintiff has supplemented that submission by your
11 letter dated May 4th. I don't see necessarily that there's
12 more that this Court would need in order to make a
13 determination as to whether or not the plaintiff has carried
14 its burden of establishing the elements for injunctive relief
15 under Rule 65.

16 MR. BOLLER: Your Honor -- sorry, this is -- I
17 apologize. It's an awkward medium, and I didn't mean to talk
18 over the Court. So again, for the record, this is Robert
19 Boller from Barnes & Thornburg.

20 The point I would make to the Court here is I believe
21 the plaintiff addressed their position with respect to Rule 65
22 and whether or not they are entitled to the injunction in their
23 moving papers. There's an entire memo of law dedicated to this
24 point that was provided in connection with the complaint.

25 So it seems to me that per the Court's, kind of,

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1 indication of the direction that you want to go, that we've
2 heard from the plaintiff with respect to why they feel Rule 65,
3 you know, has been met here, the requirements have been met,
4 and they are entitled to the TRO. I'm happy to address our
5 position with why we think that that is not the case.

6 THE COURT: All right. Since the plaintiff has raised
7 some concern about the procedure, I ask the plaintiff to make
8 your presentation as to why you believe that the plaintiff is
9 entitled to injunctive relief here under Rule 65, and address
10 any issue that you believe not adequately addressed in your
11 complaint and your memorandum of law and your letter of May
12 4th. If there's something beyond that that you think is
13 compelling and conceivably could change or determine the
14 outcome, make your presentation now, and then I'll give the
15 opportunity to the defendants to respond.

16 MS. KHURDAYAN: Sure. Thank you, your Honor.

17 If I may start with giving a brief factual background
18 of the case and what actually brought us to the point of
19 commencing litigation via emergency relief/preliminary
20 injunction with a temporary restraining order.

21 As plaintiff alleged in the verified complaint, when
22 plaintiff initially invested and was approached by fund
23 managers to invest into the funds, the funds were described to
24 plaintiff as a highly liquid hedge-fund-like vehicle, with
25 several liquidity options and quarterly withdrawals. And

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1 plaintiff was assured that they would be able to withdraw from
2 the funds at any point.

3 And the funds documents, the offering documents, also
4 supported this position by saying that 70 percent of the fund
5 assets would be invested in the highly liquid cryptocurrency.
6 And only after 30 percent of the fund's asset would be devoted
7 to very, very liquid creditors that involved cryptocurrency
8 mining. It is in reliance on this representations and the
9 nature of the funds and the nature of the investment that
10 plaintiff KDH decided to invest money and subscribe to the
11 fund.

12 Now, coincidentally, almost at the same time as
13 plaintiff invested into the fund, the cryptocurrency market
14 experienced a crash. And within weeks of investing, plaintiff
15 reached out to defendants asking to withdraw the funds.
16 Plaintiff was convinced that there was no reason for the
17 withdrawal; that most of the funds were not yet invested in the
18 cryptocurrency that crashed; and that plaintiff should remain
19 in the fund, the fund would continue to provide quarterly
20 withdrawals and opportunities to liquidate to investor at any
21 point, and to basically rely on the manager's experience and
22 expertise in the cryptocurrency trading debate.

23 What happened in reality is that after -- shortly
24 after managers and sponsors of the fund received withdrawal
25 requests from plaintiff -- and we can only view this from many

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1 out (ph) investors as well -- they substantially deviated from
2 the investment strategy, and they essentially turned what was
3 supposed to be a highly liquid cryptocurrency trading fund into
4 a mining operation.

5 At some point in 2018 -- and they are not sure where,
6 because proper disclosures were never provided to investors --
7 they expended six and-a-half million dollars on just purchasing
8 the mining equipment. Now, they've only raised close to \$15
9 million. And after the value of the funds was already
10 declining, they spent almost half of it on mining equipment,
11 never updated investors.

12 When plaintiff KDH tries to obtain any information on
13 mining and what was happening with the funds, they -- really
14 defendants used every known tactic or delay to avoid answering
15 the question. And this all culminated really in December of
16 2019, when defendants sent a notice update to investors saying
17 that they've decided to turn an investment vehicle, the fund,
18 into operating mining business; and that they would be provided
19 information -- providing information in the coming months about
20 the proposed restructuring.

21 Now, interestingly enough, in the update in December,
22 they stated that cryptocurrency mining was always the focus of
23 the fund from day one. It is easily disputed by the offering
24 documents themselves. This was supposed to be a cryptocurrency
25 trading fund, not a mining business.

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1 Now, mining equipment is subject to very, very rapid
2 depreciation. We know, again, based on very limited investor
3 updates that were received from the sponsors that only in 2019,
4 the mining equipment accumulated 3.4 million in depreciation.
5 So the equipment that they spend six and-a-half million in 2018
6 is virtually worth nothing by now, in 2020.

7 In February, defendants sent another update saying
8 that they are thinking of consolidating the fund with their
9 related affiliated business, Iterative OTC. That is a separate
10 issue, because during the past two years, when the value of the
11 funds was depreciating rapidly, by now investors lost over 80
12 percent of the fund as that they've invested. Interestingly
13 enough, related business of the sponsor Iterative OTC has been
14 driving in the past year.

15 In the offering document, defendants provided that the
16 minor mining strategy would decide that the mining operation
17 would be mining cryptocurrency, and then selling the
18 cryptocurrency through a related business of the sponsor,
19 Iterative OTC.

20 Up until March of this year, it was really unclear
21 what this proposed restructuring would look like. The only
22 thing that was -- the only information that was provided to
23 investors was that we will be restructuring -- we will be
24 consolidating with our flagship business, Iterative OTC, which
25 is a trading platform, and their other mining operation, that's

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1 defendant Iterative Mining, LLC.

2 In March, investors received requests for consent, but
3 essentially it looks like just a fourth -- fourth Securities
4 Exchange offer. Basically, what the sponsors are saying now
5 is, All right, you're investors. You have three options:

6 Option number one. You can consent to our
7 restructuring, acknowledge that you've received all the
8 material information, acknowledge that you raised any conflict
9 of interest between the fund, the new operating entity, and the
10 affiliated entities, acknowledge that you understand the
11 restructuring, and pay for the expenses of the restructuring.
12 And whatever remaining funds are left, we will basically let
13 you access the funds.

14 Option number two. Investor consents to the
15 restructuring (unintelligible) if you receive all the material
16 information, waive any conflict of interest, and we will pay
17 for the restructuring. And we will let you continue in the new
18 operating business on the terms that will be substantially
19 different from the terms that you were participating in the
20 fund with; but, nonetheless, please acknowledge you have all
21 material information about the transaction.

22 Or option number three: Don't consent, and then we
23 will ship you -- essentially they say, We will do a
24 distribution in kind. But what they are saying is, We will
25 ship you outdated -- the prorated share of outdated mining

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1 equipment, minus the shipping and handling fees.

2 So this offer was initially supposed -- was always
3 provided to plaintiff on March 1st, and was initially supposed
4 to expire on March 27.

5 After reviewing the offering documents, plaintiff sent
6 very basic questions to defendants about the timeline of the
7 transactions, the payout they would be entitled to after the
8 transaction, the anticipated restructuring expenses, really
9 four very basic questions.

10 Defendants couldn't provide a definitive answer. They
11 said that there was no such timeline for restructuring.
12 They've also said that this opportunity to liquidate is not a
13 negotiation, and basically essentially saying, We can keep you
14 locked with an illiquid vehicle if we want to.

15 For the end of the month in March, defendants extended
16 the deadline for receiving consent by one more month to April
17 28th. On April 14, plaintiff served a demand for books and
18 records because, once again, defendants did not provide really
19 material and necessary information in order for plaintiff to
20 evaluate this investment and make a decision.

21 When defendants refused to provide material (ph) of
22 the documents requested, which was on April 21st, plaintiff
23 really had no choice but to ask the Court to intervene so that
24 the restructuring does not proceed and plaintiff has an
25 opportunity to understand what happened to the funds, what

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1 happened to the money, and what is it that they are being
2 forced into.

3 Despite what counsel for defendants claims, there was
4 no transaction scheduled to close on April 28. In fact,
5 defendants on many occasions refused to provide the timeline
6 for the actual restructuring and closing of the transaction.
7 April 28 was the deadline for receiving consent from investors.

8 And in fact, after the temporary restraining order was
9 signed the very next day, on April 28th, defendants sent
10 another letter to investors saying that we will basically wait
11 for the TRO to expire or released it; and after, we are not
12 restrained any longer from proceeding with this transaction, we
13 will proceed with the restructuring, and we will proceed with
14 the restructuring based on the consent that we receive today on
15 April 28th. And this is exactly the kind of harm that we were
16 trying to enjoin and prevent by moving for preliminary
17 injunction/temporary restraining order.

18 Essentially, your Honor, this is a cause of action for
19 securities fraud. And right now, plaintiff is being forced to
20 exchange the limited partnership interest into ownership
21 interest in a new business venture in which they were never
22 planning to invest to begin with, and is not being provided any
23 material information about the transaction or its soft chang
24 (ph) or the possibility of the funds to -- you know, to make no
25 firm decisions.

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1 So it is our position that the relief is of an
2 emergency nature; that the harm the plaintiff will sustain will
3 be irreparable because, as provided in the documents, the terms
4 of the new company and of the new business venture will be
5 substantially different to the terms that were provided to
6 investors in the cryptocurrency fund. Or if we don't consent
7 to the transaction, basically, the investor will be shipped
8 outdated hardware and the fund will be dissolved.

9 And we also maintain that the balance of equities
10 raised in our favor in this case because, once again, we don't
11 see how defendants would be harmed by the TRO, as they had no
12 set schedule for closing the transaction, and a delay in
13 exercising some stance (ph) would not prejudice or harm
14 defendants in any way.

15 THE COURT: All right. Thank you.

16 One question that bears on your last argument
17 concerning the irreparable harm: There's a provision of the
18 PPM that says that investments should "not be made by any
19 person that cannot afford a total loss of its principal or by
20 anyone with a need for liquidity in their investments."

21 In light of that provision, was plaintiff not on
22 notice that these were very risky ventures, and that there
23 could have been -- circumstances could arise under which
24 plaintiff could lose its total investment?

25 MS. KHURDAYAN: Your Honor, plaintiff was aware that

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1 this was a risky investment. However, the nature of the
2 investment and the fund changed drastically, without notice to
3 plaintiff. Had plaintiff known that defendants would engage in
4 mining operations, which is completely different risk level and
5 rigidity (ph) level from cryptocurrency trading, they would not
6 have invested into the fund to begin with.

7 THE COURT: Let me address that for a moment as well.

8 The PPM also says that concerning this issue of the
9 investment in the mining operations, that mining operations and
10 equipment and participating in transactions on over-the-counter
11 cryptocurrency, and then it says: "Is expected to make up
12 approximately 30 percent of the master fund's combined assets."

13 I read that language to be qualifying, and I don't
14 read it as rigidly and absolute as you may suggest that somehow
15 there is a mandatory limit of 30 percent.

16 MS. KHURDAYAN: Your Honor --

17 THE COURT: Go ahead, finish. And then I will ask
18 defendants to weigh in.

19 MS. KHURDAYAN: Sure.

20 Your Honor, what we ask the Court to do is to move at
21 the fatality of defendants' action in what we allege is really
22 a fraudulent scheme. Because it's not one action that
23 defendants took the gort (ph) at into court today, it's
24 actually all the different circumstances. It's them switching
25 from a fund that was supposed to fall for its own

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1 cryptocurrency trading into mining, when they had an
2 over-the-counter trading platform set up that has exclusive
3 price to buy all the cryptocurrency that was mined by the
4 mining master fund.

5 In the PPM it says that this over-the-counter trading
6 business was supposed to be to the fund that are more favorable
7 than any other buyers or sellers of cryptocurrency that work
8 with the OTC counter. We don't know if that was the case
9 because it never send the documents.

10 But now what we have is a separate -- but related --
11 business of defendants, Iterative OTC, that is profiting
12 substantially from the cryptocurrency that is being mined by
13 the fund. But they are not care (ph) if the profit with the
14 fund.

15 So what defendants did is they took investors' money,
16 they bought mining equipment, and then they mined
17 cryptocurrency and sold it to an affiliated entity without
18 profiting from it and caused substantial damages to investors;
19 because investors did not profit from those trades. Instead,
20 investors were locked in a highly illiquid investment vehicle,
21 and by now lost over 80 percent of their investment.

22 THE COURT: All right. Thank you.

23 What I find in your presentation is a very detailed
24 narrative of factual and evidentiary issues; but I don't find
25 sufficient indication of where you have made a case for

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1 irreparable harm or for damage that could not be addressed by
2 monetary means.

3 Let me ask defendants to respond.

4 MR. BOLLER: Thank you, your Honor.

5 And again, for the record, this is Robert Boller.

6 Taking your last point first, I agree, I think, you
7 know, we noticed that in that entire presentation, the
8 irreparable harm standard, you know, was not addressed. And
9 the fact that what the plaintiffs are seeking here is money
10 damages was not addressed. The fact that, you know, that very
11 clearly they want to leave this partnership, they want to seek
12 damages in connection with their departure.

13 But money damages, while potentially available, are
14 not sufficient to, you know, to provide for a TRO. They've
15 cited a number of cases that stand for the proposition that if
16 a potential judgment debtor is likely to be insolvent, that
17 that might create an exception. But as we pointed out in our
18 letter, the partnership is not a potential judgment. There are
19 no claims asserted against the partnership. The partnership
20 is, in fact, the nominal plaintiff here, right. So the idea
21 that the partnership should be enjoined from undergoing its
22 restructuring and to remain in a state of stateness (ph)
23 doesn't make much sense to us, especially when you put this
24 into the broader context.

25 And I was glad that counsel brought up the letter that

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1 she addressed to the Court yesterday, because it's worth
2 looking at that letter and the letter that is attached to it,
3 which was our communication with our investors the other day,
4 to get a sense of what the context is here, which is this
5 transaction was announced months ago. The deal documents were
6 mailed, as counsel concedes, were sent to everyone on March
7 1st, which is over two months ago at this point. It was 100
8 some-odd pages of disclosures around the transaction and the
9 structure. There were different options afforded to all the
10 investors.

11 And so when we communicated the other day, one of the
12 things that the general partners' letter pointed out was, Look,
13 there are 60 limited partners in this fund. Two-thirds of them
14 would like to go into the new vehicle; they believe in this
15 asset class and this investment methodology. A third can't
16 stand the volatility, for whatever reason they want out.

17 So of the 60 limited partners, 59 of them have made a
18 determination about where they want to go. One, KDH, the
19 plaintiff here, is not only refusing to participate in the
20 restructuring, has brought this litigation, and ground the
21 whole thing to a halt. So we now have 59 limited partners
22 frozen and waiting on the resolution of what happens here with
23 respect to this individual limited partner, right. And so
24 that's the broader context here.

25 The claim was filed a week ago. And this letter was

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1 sent to investors a week ago. No one else has joined this
2 litigation. It's not like there's a parade of limited partners
3 coming down into the court and saying, Yes, we were lied to.

4 I think, as the Court correctly pointed out, the PPM
5 includes reams of disclosures around liquidity and the lack
6 thereof, around the mining operations, around public (ph)
7 ventures and relationships with related parties, you know,
8 counsel did not address, but they put into the record as
9 Exhibit 1 to the Hatami declaration, the subscription
10 agreement, wherein they acknowledged receiving all of this.
11 And they acknowledged specifically that they have been advised
12 of the liquidity issue; that they have been advised of what the
13 investment strategy was; that they might be side-pocketed; that
14 there was a chance that their ability to withdraw, you know,
15 would be hamstrung given market conditions. They acknowledged
16 receiving all of that, being sophisticated enough to make the
17 decisions, and wanting to make the decision notwithstanding
18 these risks.

19 And then the only other thing I would point out in the
20 documents, your Honor, is page 4 of the PPM -- which is right
21 in the beginning, when they are explaining what are the
22 high-level risks -- the manager says to them, Look, the
23 discussion that we are having of investment strategy is subject
24 to market conditions. This will change. And of course it
25 would.

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1 Because if you're the general partner of an investment
2 firm, you have to have the fluidity and the flexibility to
3 adapt to what's going on in the market. So they acknowledge
4 that the market for these cryptocurrencies went down 80 or 90
5 percent during 2018. Well, then, of course, we weren't just
6 going to keep throwing investor money into a fire pit,
7 because -- you know, because they think that's where we're
8 going. The management needs the flexibility, and the documents
9 gave the management the flexibility to do these things. So
10 it's a bit like sour grapes to come back now and claim fraud,
11 when this was all fully disclosed and they disclaimed their
12 reliance on anything outside of the documents.

13 I have some additional points; but, your Honor, if
14 that's sufficient, you tell me.

15 THE COURT: All right. Thank you.

16 MS. KHURDAYAN: Your Honor, if I may, since counsel
17 for defendants raised a new argument about, you know, us being
18 the only limited partner preventing this whole transaction from
19 moving forward, and having 59 limited partners that consented
20 to the transaction and are eager to go forward with the
21 restructuring, if I may address this point.

22 THE COURT: You may.

23 MS. KHURDAYAN: Thank you, your Honor.

24 THE COURT: And then (unintelligible) the hearing.

25 MS. KHURDAYAN: Thank you, your Honor.

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1 That is really not the case, because we filed this
2 action very recently. Plaintiff felt like they had no choice
3 and they were forced into the transaction.

4 And then since then, at least two other groups of
5 investors indicated that they also felt like they had no choice
6 and they were forced into the transaction, and they had no
7 other choice but to consent to the restructuring or risk
8 getting hardware shipped. So I just want the point that
9 characterization of plaintiff as being the only one who's
10 holding 59 limited partners hostage is very far from reality.

11 There was no transaction that was supposed to close
12 come April 28, so we are really not damaging any
13 (unintelligible) preventing this transaction from closing.

14 THE COURT: All right. Well, let me thank you again.

15 I'm going to close the proceeding at this point.

16 And on the basis of my reading of the complaint and
17 the memorandum of law of the plaintiff and the declarations, as
18 well as the letter exchanges that have taken place in the
19 letters of May 1 and May 4th, I am not persuaded that the
20 plaintiff has made a sufficiently compelling case of
21 irreparable harm, which is the most significant element of
22 injunctive relief.

23 I am persuaded that this issue that plaintiff has
24 raised in this proceeding is fundamentally a dispute over money
25 damages; and I don't see that the plaintiffs could not be made

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1 whole or in whatever form there may be monetary relief.

2 And also I believe that the balance of equities tilt
3 in favor of defendants. Plaintiff is one of multiple partners
4 in this transaction. And to derail the entire transaction on
5 the basis of the interests of one party I believe is not
6 appropriate.

7 So on that basis, I am going to rule that the
8 injunction that was issued by Judge McMahon will be dissolved.
9 And I will direct the parties to meet and confer and develop a
10 proposed case management plan to guide the proceedings from
11 this point forward.

12 Is there anything else? If not, I thank you.

13 And we will issue a ruling memorializing the bench
14 determination that I have made at this point.

15 Thank you.

16 MS. KHURDAYAN: Your Honor, if I may address
17 (unintelligible). This was filed also request to -- letter
18 motion to request filing of certain exhibits under seal,
19 because those were confidential offering documents. And I
20 understand that initially it was granted, from what I
21 understood from communication with the clerk. But then there
22 was an additional guidance issued and docketed saying that the
23 request to file documents under seal would be lifted, I
24 believe, tomorrow, unless extended by the Court.

25 THE COURT: I will ask the parties to develop an

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1 appropriate protective order that will determine the question
2 of what documents should be filed under seal. Upon receipt of
3 that draft protective order, I will endorse it. And the
4 parties can then submit under seal whatever they deem subject
5 to the protective order.

6 MS. KHURDAYAN: Thank you, your Honor.

7 MR. BOLLER: Thank you, your Honor.

8 THE COURT: Thank you.

9 * * *